

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DAPHNE RICHARD, ET AL.,

Plaintiff,

v.

GLENS FALLS NATIONAL BANK,

Defendants.

Civil Case No. 1:20-CV-00734-BKS-DJS

**PLAINTIFF DAPHNE RICHARD'S MEMORANDUM OF LAW IN RESPONSE TO
THE COURT'S ORDER TO SHOW CAUSE ON THE ISSUE OF SUBJECT MATTER
JURISDICTION**

Plaintiff Daphne Richard (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her attorneys, pursuant to this Court’s order entered on January 20, 2021, submits this memorandum addressing the Court’s subject-matter jurisdiction.

Plaintiff has attached a Proposed First Amended Complaint (“PFAC”), redlined, as Exhibit “A” to the concurrently filed Declaration of Taras Kick in Response to the Court’s Order to Show Cause Regarding Jurisdiction (“Kick Decl.”). In that PFAC, Plaintiff has made only one change, and it is to the jurisdictional allegation in Paragraph 12, now alleging in the PFAC as follows:

12. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) & (6), this Court has jurisdiction because (a) the proposed Class is comprised of at least 100 members; (b) at least one member of the proposed Class resides outside of the State of New York; and (3) the aggregate claims of the members of the proposed Class exceed \$5 million, exclusive of interest and costs.

Plaintiff believes this allegation would now confer original jurisdiction over this matter to this Honorable Court pursuant to CAFA, 28 U.S.C. §§ 1332(d)(2) and (6), which instills a federal district court with original jurisdiction over a civil action if: (1) the amount in controversy must exceed \$5 million, as aggregated from the claims of the individual class members, 28 U.S.C. §§ 1332(d)(2), (6); (2) the suit must be brought as a “class action” for a proposed class with at least one-hundred members, *id.* §§ 1332(d)(2), (5); and (3) “any member of [the] class [must be] a citizen of a State different from any defendant.” *id.* § 1332(d)(2)(A).

Further, Plaintiff’s counsel has conferred and discussed this jurisdiction issue with Defendant’s counsel, and Defendant’s counsel is in agreement that Defendant has customers outside of New York and does not intend to challenge the allegation that at least one member of the proposed Class resides outside of the State of New York. (Kick Decl. at ¶ 4.)

Plaintiff’s counsel also has reviewed the 10K filed by Defendant’s holding company Arrow Financial Group, which can be found at this link https://www.arrowfinancial.com/Portals/2/PDFs/10K,%20Proxy,%20Annual%20Review/10K_2019.pdf, and which is attached as Exhibit B to the Declaration of Taras Kick, dated February 3, 2021, and believes aggregate claims of the class members exceed \$5 million. (Kick Decl. at ¶ 5.)

As such, Plaintiff respectfully submits that with the amendment in the PFAC, she will have met the CAFA pleading requirements for this Court’s jurisdiction. *See, e.g., Sorrentino v. ASN Roosevelt Center, LLC*, 588 F. Supp. 2d 350, 353 (E.D.N.Y. 2008) (citing *Mattera v. Clear Channel Commc’ns, Inc.*, 239 F.R.D. 70, 78 (S.D.N.Y. 2006) (construing “all ambiguities and draw[ing] all reasonable inferences in favor of the party asserting federal jurisdiction.”). Once Plaintiff properly alleges subject-matter jurisdiction under CAFA, federal subject-matter jurisdiction is presumed unless a party can affirmatively demonstrate that an exception to CAFA applies. *See Gonzales v. Agway Energy Services, LLC*, No. 5:18-cv-235 (MAD/ATB), 2019 WL 910669, at *3 (N.D.N.Y. Feb. 25, 2019).

Dated: February 3, 2021

Respectfully submitted,

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and the Putative Class

CERTIFICATE OF SERVICE

I, Taras Kick, hereby certify that on the 3rd Day of February 2021, the foregoing document, filed through the CM/ECF System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ *Taras Kick*